

APPEAL NO. 010672

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 6, 2001. With respect to the issues before her the hearing officer determined that the appellant (claimant) sustained a compensable injury on _____, and had resulting disability from October 16, 2000, to December 1, 2000. The claimant appeals, contending that the hearing officer's decision on the period of disability is against the great weight and preponderance of the evidence and that the hearing officer erred in determining that the claimant sustained a back strain/sprain rather than simply a low back injury. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed as reformed.

The claimant appeals the hearing officer's determination that he "sustained a back strain/sprain," claiming that such finding is essentially an "extent of injury" finding which was not the issue, and that the hearing officer should simply have found that the claimant had a low back injury. We note that the disputed issues reported from the benefit review conference were injury and disability. There was no issue on the extent of the injury. While the Appeals Panel has encouraged hearing officers to indicate the nature of the injury when determining whether an injury existed, we have also stated that it is not appropriate for a hearing officer to make a final determination on the issue of extent of injury when the issue of extent of injury is not before the hearing officer. See Texas Workers' Compensation Commission Appeal No. 001239, decided July 13, 2000.

We consider the determinations by the hearing officer concerning the extent of the claimant's low back injury to be beyond the scope of the issue before her and we reform Finding of Fact No. 4, Conclusion of Law No. 3, and the decision to reflect that the claimant sustained a compensable low back injury on _____. The extent of the low back injury was not in issue. See Texas Workers' Compensation Commission Appeal No. 002898, decided January 29, 2001.

The claimant testified that on _____, he was moving a spool of wire while working for the employer when he sustained an injury and he offered evidence from various medical care providers concerning his injury. The claimant suggests that his evidence established disability through the date of the CCH. While another fact finder may have found differently in this case, that is not a reason for reversal. The hearing officer determined that the claimant had disability until the date of the MRI, a test which demonstrated no significant abnormalities. This evidence was sufficient to support the determination of the hearing officer on the issue of disability.

The hearing officer is the sole judge of the weight and credibility of the evidence presented. Section 410.165(a). It was her responsibility to resolve conflicts and

contradictions in the evidence, including the medical evidence, and determine what facts have been established. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer, as fact finder, may believe all, part, or none of the testimony of any witness. Burelsmith v. Liberty Mutual Insurance Company, 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). The Appeals Panel not being fact finders, does not normally pass upon the credibility of witnesses or substitute our judgment for that of the trier of fact. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's findings we will reverse only if they are so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629 (Tex. 1986). We do not find the challenged determinations to be against the great weight and preponderance of the evidence. Accordingly, the decision and order are affirmed as reformed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge